IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

LA.App..No. 253 of 2003()

LAR.22/1998 of SUB COURT, PAYYANNUR
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APPELLANT: PETITIONERS:
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1. K.V. LAKSHMI AMMA, W/O. LATE
P.V. SREEDHARAN, RESIDING NEAR S.S. TEMPLE,
PAYYANUR.

2. V.V. LALITHA, PAYYANNUR THERU,
PAYYANNUR POST, KANNUR DISTRICT.

3. V.V. PADMINI, PAYYANNUR THERU,
PAYYANNUR POST, KANNUR DISTRICT.

4. V.V. SATHYAN, PAYYANNUR THERU,
PAYYANNUR POST, KANNUR DISTRICT.

5. V.V. SULOCHANA, PAYYANNUR THERU,
PAYYANNUR POST, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.MANOJ CHANDRAN

RESPONDENTS: RESPONDENTS:

THE SPECIAL TAHSILDAR,
LAND ACQUISITION, KANNUR.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.253 of 2003

Dated 24th September, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the judgment and decree in L.A.R.22/98 on the file of the Sub Court, Payyannur. The acquisition is for the purpose of doubling of railway line. It is seen that the claimants had a request for capitalization method. Accordingly, the value of improvements and the trees and structures has been computed and the land value was fixed. The reference court found that shifting charges had not been given and hence enhancement only in that regard was given. Dissatisfied, this appeal.

2. Though the claimants have asked for 50% more on the value of improvements, we find from the judgment that the reference court on the basis of the evidence tendered by the claimant herself has come to the conclusion that the value of improvements has been properly assessed and she has been given just compensation. However, it appears that the claimant has some genuine grievance on the value of the building. The claimant had a case for Rs.10 lakhs for residential building and

after depreciation, the value was fixed at Rs.2,40,835/-. There is no dispute regarding the locational importance. The Railway Engineer valued the building at Rs.3,02,481/-. However, the Advocate Commissioner assessed the value of the building at Rs.2,79,711/-. It is seen from the report of the Advocate Commissioner that the assessment has been made after depreciation. That version appears to be true also because even going by the value assessed by the Railways, the requisitioning authority, the building is valued at Rs.3,02,481/-. Therefore, the value fixed by the Advocate Commissioner at Rs.2,79,711/- can only be after depreciation. In this context, it is pertinent to note that even according to the reference court, “the entire annexures attached to the report prepared by her are apparently prepared by another skilled person or expert without obtaining permission of the court. However I find that a well prepared plan and statement of classification are provided to her by the skilled person”. No reason whatsoever is stated by the reference court in discarding the evidence of the Advocate Commissioner. It is seen that there is no objection to the report of the Advocate Commissioner. At any rate, there is no evidence on the side of the respondents also. Therefore, we are of the view that the

value of the building has to be refixed at Rs.2,79,711/- in the place of Rs.2,40,835/-.

Accordingly, we partly allow the appeal and modify the judgment and decree as far as the value of structure is concerned. The appellant will be entitled to Rs.2,79,711/- as value of structure and also the eligible statutory benefits.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO.253 OF 2003

J U D G M E N T

Dated 24th September, 2007.